

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7730

Petition of Vermont Electric Power Company, Inc. and )  
Vermont Transco LLC (collectively, known as )  
"VELCO"), for a Certificate of Public Good, pursuant to )  
30 V.S.A. § 248, authorizing: (1) the installation of two )  
variable shunt reactors at the Coolidge Substation in )  
Cavendish and Ludlow, Vermont; (2) the installation of )  
one variable shunt reactor at the New Haven Substation; )  
and (3) the relocation of an existing static shunt reactor )  
from the New Haven Substation to the Vernon )  
Substation )

Order entered: 8/1/2011

**PROTECTIVE ORDER RE CONFIDENTIAL TREATMENT OF  
CRITICAL ENERGY INFRASTRUCTURE INFORMATION**

**I. INTRODUCTION**

On March 21, 2011, Vermont Electric Power Company, Inc., and Vermont Transco LLC (collectively, "VELCO") filed a Motion for Confidential Treatment of Selected Prefiled Exhibits that it alleges constitute Critical Energy Infrastructure Information ("CEII").<sup>1</sup> On May 16, 2011, VELCO filed a Revised Motion for Confidential Treatment of Selected Prefiled Exhibits which was accompanied by an averment log and a signed Protective Agreement that were not included in VELCO's filing of March 21. No party opposed VELCO's motion.

**II. DISCUSSION**

I have reviewed the revised motion and supporting materials, and conclude that VELCO

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1. The Federal Energy Regulatory Commission ("FERC") defines CEII as:  
Specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) does not simply give the general location of the critical infrastructure.

has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, I hereby grant VELCO's motion for a protective order.

To promote full public understanding of the basis for its decisions, the Board has actively taken steps to limit the amount of information subject to protective orders and has encouraged parties to remove material from that protection to the extent possible. Since 2001, the Board has required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.<sup>2</sup> Generally, the Board only resolves disputes about information when there is a genuine disagreement about its confidential nature.<sup>3</sup> However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, the Board considers four issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Does the matter sought to be protected contain CEII?
- (3) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (4) Has the party seeking protection shown "good cause" for invoking the Board's protection?<sup>4</sup>

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2. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 ("Entergy Docket"), Order of 11/9/01 at 5-6.

3. *Id.* at 6.

4. *See, e.g.*, Entergy Docket, Order of 3/29/02 at 2.

VELCO maintains that all the exhibits in question fall within the FERC definition of CEII because they relate to the bulk transmission system's exposure to system contingencies and contain specific details about certain VELCO facilities. VELCO also maintains that the information in the exhibits could be used by a third party wishing to do harm to or severely damage critical electric system assets. In particular, Exhibit VELCO-Diebold-2 contains data, descriptions of critical system elements and transmission system performance and power flow diagrams of the regional electric system, details of transmission system deficiencies, operating criteria and description of protection/control devices, identification of generation resources that support the regional transmission system, transmission system contingencies and resulting problems, potential solutions to improve the deficiencies, and descriptions of how the solutions resolve deficiencies under different conditions. Exhibits VELCO-Barrett-2, 6, 7, 9 and 10 contain data pertaining to geographic locations, circuit identifiers, engineering notes, voltage levels and switches affecting the proposed project as well as other elements of the Vermont transmission network. Exhibits VELCO-Barrett 4, 8 and 11 contain data pertaining to geographic locations, engineering notes, voltage levels, switches, and relay settings affecting the proposed project as well as other elements of the Vermont transmission network.

I have reviewed the revised motion and supporting materials, and have applied the existing standard. With respect to the alleged CEII, I conclude that VELCO has made a *prima facie* showing that the redacted information falls within the FERC definition of CEII. FERC began limiting public access to CEII in October of 2001, in response to the terrorist attacks of September 11, 2001, with the issuance of Treatment of Previously Public Documents, Docket No. PL02-1-000, 97 F.E.R.C. 61,030 (2001). FERC has since issued a series of subsequent orders that establish formal procedures for the management and consistent treatment of, and restrictions on access to, CEII (including but not limited to Orders No. 630, 630-A, 643, 662, 702 and 890).<sup>5</sup>

Because VELCO has made a *prima facie* showing that the redacted information is CEII, the information warrants confidential treatment. Therefore, I grant VELCO's motion, as revised, for confidential treatment of the information.

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5. FERC procedures for the management of CEII are also found at 18 C.F.R. §§ 388.112 and 388.113.

### **III. ORDER**

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by VELCO (as described in VELCO's Motion) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.
2. At any hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of August 1, 2011, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.
3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement.

5. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 1<sup>st</sup> day of August, 2011.

s/Jay E. Dudley  
Jay E. Dudley  
Hearing Officer

OFFICE OF THE CLERK

FILED: August 1, 2011

ATTEST: s/Susan M. Hudson  
Clerk of the Board

NOTICE TO READERS: *This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*